

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STEVEN R. KINCAID,

Plaintiff,

vs.

BANK OF AMERICA,

Defendant.

04-CV-11522

**AFFIDAVIT OF STEVEN R. KINCAID IN OPPOSITION TO DEFENDANT'S
MOTION TO TRANSFER VENUE**

I, STEVEN R. KINCAID, being duly sworn, depose and state as follows:

1. I am over eighteen (18) years of age and competent to testify. I have personal knowledge of the facts set forth in this affidavit.
2. I am the Plaintiff in this action.
3. I am a citizen of the Commonwealth of Massachusetts. In and before 2002, I both lived and worked in Boxford, Massachusetts.
4. In the spring of 2002, a management recruiting firm contacted me at my office in Massachusetts to recruit me for a position with Defendant.
5. I had several telephone interviews with the recruiter and with representatives of Defendant placed to my office in Massachusetts. The offer was

extended to me though a telephone call placed to me, and subsequently in a letter mailed to me, in Massachusetts.

6. I only relocated to North Carolina to work for Bank of America. When I was terminated after less than nine (9) months, I immediately returned to Massachusetts.

7. Bank of America's website (www.bankofamerica.com) boasts that, as of July 2004, it owned and operated 303 banking centers and 1325 automated teller machines (ATMs) in Massachusetts. *See Exhibit 1, attached.* According to that same site, Defendant therefore has a higher number of banking operations in Massachusetts than it has in any state (including North Carolina) except California, Florida, and Texas.

8. In its papers, Defendant identifies as witnesses certain employees and former employees who, it represents, live in North Carolina. There are, however, additional witnesses who I expect to be called to testify. These witnesses include:

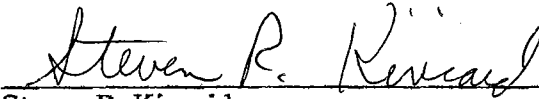
a. Representatives of Abt Consulting, Forbes Consulting, and Eclipse Video, all of whom are located in the Boston, Massachusetts area. Each of these entities are third-party vendors with whom I worked on my major Bank of America projects, thus enabling them to testify about, among other things, the timeliness and quality of my performance.

b. Representatives of Fidelity Investments, also located in the Boston, Massachusetts area. These representatives can testify about my work performance, work ethic, and my particular areas of expertise.

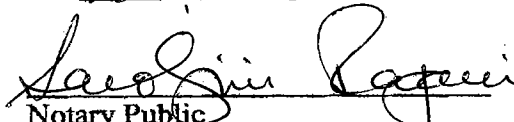
c. Because of the national scope of my position with Defendant, Bank of America employees and suppliers located in Boston, Massachusetts; Dallas, Texas; San Francisco, California; Minneapolis, Minnesota; St. Louis,

Missouri; and Miami, Florida also can testify about, among other things, the timeliness and quality of my performance.

Further affiant sayeth not.


Steven R. Kincaid

Sworn to and subscribed before me
this 25 day of September, 2004.


Notary Public
My Commission Expires:

SAROJINI RAJANI
Notary Public
My Commission Expires Dec. 3, 2004